

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	No. 3:23-cr-08132-JJT-1
Plaintiff,)	
)	
vs.)	Flagstaff, Arizona
)	December 5, 2023
Donald Day Jr.,)	10:26 a.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE CAMILLE D. BIBLES, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT/DETENTION HEARING

APPEARANCES:

For the Plaintiff:

Dondi J. Osborne, Esq.

U.S. Attorney's Office

123 N. San Francisco St., Suite 410

Flagstaff, AZ 86001

For the Defendant:

Luke S. Mulligan, Esq.

Federal Public Defender's Office

123 N. San Francisco St., Suite 204

Flagstaff, AZ 86001

Transcriptionist:

Jennifer A. Pancratz

Sandra Day O'Connor U.S. Courthouse, Suite 312

401 West Washington Street, Spc 42

Phoenix, Arizona 85003-2151

(602) 322-7198

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P R O C E E D I N G S

(Proceedings commenced at 10:26 a.m.)

THE COURTROOM CLERK: This is Case No. CR-2023-8132, United States of America versus Donald Day Jr. Defendant is present and in custody.

This is the time set for an arraignment and a detention hearing. Counsel?

MS. OSBORNE: Good morning, Your Honor. Dondi Osborne for the United States.

THE COURT: Good morning, Ms. Osborne. Do you have a case agent at counsel table?

MS. OSBORNE: I'm sorry, yes. Agent -- Special Agent Sietta [phonetic] from FBI is present with me at counsel's table.

THE COURT: All right. Thank you and good morning.

MR. MULLIGAN: Good morning, Your Honor. Luke Mulligan for Donald Day.

THE COURT: And good morning, Mr. Mulligan, and good morning, Mr. Day.

Mr. Day, this is the time set for two hearings in your case.

Mr. Mulligan, have you had -- first I'm going to ask, have you had an opportunity to review the pretrial services report?

THE DEFENDANT: Yes, Your Honor.

1 MR. MULLIGAN: Yes, Your Honor, I did with Mr. Day.

2 THE COURT: All right. And Mr. Mulligan, based on one
3 bit of information there, I have concerns as to whether Mr. Day
4 can hear me properly. Do you believe it would be helpful to
5 have headphones?

6 MR. MULLIGAN: Do you need headphones to hear better?

7 THE DEFENDANT: She talks very clear. I can hear her.

8 MR. MULLIGAN: I think we're fine, Your Honor.

9 THE COURT: All right, thank you. I just wanted to
10 inquire and make sure.

11 So, Mr. Day, this is the time set for two hearings in
12 your case. We're going to start off with a formal arraignment
13 on the indictment first.

14 Mr. Mulligan, did you have an opportunity to review
15 the indictment with Mr. Day?

16 MR. MULLIGAN: Your Honor, I did. I reviewed the
17 indictment with Mr. Day. His name is spelled correctly. We
18 would waive a formal reading and enter a plea of not guilty.

19 THE COURT: All right. And I will enter pleas of not
20 guilty on the defendant's behalf to the two counts of the
21 indictment.

22 The motion deadline in this case is set for Tuesday,
23 December 26th of 2023, and a jury trial is scheduled for
24 Tuesday, February 6th of 2024, at 9:00 a.m. before District
25 Judge Tuchi in Phoenix Courtroom 505.

1 And I realize I did not go back to Ms. Osborne.
2 Ms. Osborne, as I reviewed the motion sealing this case, I
3 wanted to be sensitive to the United States' concerns. Is the
4 United States moving to unseal the case based on the arrest of
5 the defendant?

6 MS. OSBORNE: We are, Your Honor.

7 THE COURT: All right. And I will unseal the case at
8 this time based on compliance with the terms of really the
9 motion sealing it.

10 Now, the next hearing that we're going to take up,
11 Mr. Day, is the detention hearing. And we discussed this a
12 little bit yesterday in terms of what I'm looking at, but in
13 essence, the two issues that I'm looking at are whether you
14 pose a risk of nonappearance at future proceedings, whether
15 you're a flight risk; and/or, two, whether you pose a danger to
16 the community or to any specific individuals in the community.

17 My decision today is really set out or is defined by
18 several legal principles defined by Congress in a statute, and
19 those -- that statute has been interpreted by the various
20 courts, and specifically the ones that I am paying close
21 attention to are those out of the Ninth Circuit. There are a
22 number of factors that I'm guided to look at in making my
23 decision regarding detention or release.

24 Now, basically the way this works is if the United
25 States wants you held in custody, they have the burden of

1 establishing that you're a flight risk and/or a danger. Now,
2 because they have that legal burden, they're allowed to begin
3 with any argument or proffer of facts. Then Mr. Mulligan is
4 able to proceed with any argument or proffer of facts on your
5 behalf; and then if the United States, because they have that
6 burden, if they have any rebuttal information they'd like to
7 present, they're allowed a brief rebuttal. And that's
8 basically how --

9 THE DEFENDANT: Help me.

10 THE COURT: -- the hearing goes.

11 So with that I'll turn --

12 THE DEFENDANT: Please.

13 THE COURT: -- to the United States. Ms. Osborne?

14 MS. OSBORNE: Your Honor --

15 THE DEFENDANT: Help me.

16 MS. OSBORNE: -- the government at this time is going
17 to request a continuance of the detention hearing this morning.
18 The pretrial services report came in this morning after I came
19 to court. I've been in court all morning and have not had an
20 opportunity to review the pretrial services report.

21 I would note the Court set this fairly quickly --

22 THE COURT: I did.

23 MS. OSBORNE: -- yesterday, from first appearance
24 yesterday to today, and the statute does provide the government
25 three days when they request a continuance.

1 So our request here, in light of the pretrial services
2 report just coming in, as well --

3 THE DEFENDANT: Please. Please help me.

4 MS. OSBORNE: -- a fairly large amount of information
5 to review in this case, is that the Court reset this matter for
6 a detention hearing on Thursday.

7 THE COURT: All right. Thank you.

8 THE DEFENDANT: I don't care about all that.

9 THE COURT: And I will note, obviously I set this
10 quickly. I did let the parties know I -- that my plan was to
11 do that, and I knew that that would be pushing the pretrial --
12 basically the report that they're compiling on a very short
13 deadline, given all things to consider.

14 So, Mr. Mulligan, the United States, I believe --

15 THE DEFENDANT: Help me.

16 THE COURT: -- is entitled at this juncture to the
17 full three days from the initial appearance. However, I do
18 want to be sensitive to Mr. Day's position.

19 MR. MULLIGAN: Your Honor, as the pretrial services
20 report reflects, Mr. Day is very, very ill. So he would like
21 to proceed with the detention hearing today.

22 THE COURT: All right. Ms. Osborne, if I was to --
23 and I'm frankly still weighing the concerns here. Mr. Day
24 obviously wants to proceed quickly with the detention hearing,
25 and I'm sensitive to that, but I also believe the United States

1 is entitled to have sufficient time to prepare for that.

2 Would it assist the United States if I was to set this
3 a little later today?

4 And I need to put on the record that the Court is
5 unavailable tomorrow. I have hearings in a remote part of the
6 state tomorrow, so the next available time would be Thursday
7 morning.

8 Ms. Osborne, given those concerns --

9 THE DEFENDANT: You're not going to help me?

10 THE COURT: -- what's the United States' perspective?

11 THE DEFENDANT: I don't understand.

12 MS. OSBORNE: Your Honor, we could be ready this
13 afternoon if you were to reset this matter into the afternoon.

14 And I would also mention defense has some materials
15 they want to tender to the Court that I haven't seen, so those
16 are additional matters I apparently need to review, but we'd do
17 our best to be ready this afternoon.

18 THE COURT: All right. And I believe we have a
19 conflict hearing this afternoon?

20 THE COURTROOM CLERK: We do at 2:00 o'clock, Your
21 Honor. It should take --

22 THE COURT: Mr. Mulligan?

23 THE COURTROOM CLERK: -- about five minutes? It's
24 your case, Mr. Reed.

25 It will only take five minutes.

1 THE COURT: All right. Mr. Mulligan?

2 MR. MULLIGAN: That's fine, Your Honor.

3 THE COURT: All right. And obviously, if there are
4 other materials that are going to be tendered at this
5 afternoon's hearing, it is this Court's practice for those
6 materials to be exchanged.

7 And I recognize I set this on a very short time
8 schedule --

9 MR. MULLIGAN: Your Honor, I did provide them to the
10 government this morning about 8:30 or 9:00 o'clock.

11 MS. OSBORNE: I'm sorry, I haven't --

12 THE COURT: I believe Ms. Osborne --

13 MR. MULLIGAN: I understand Ms. Osborne hasn't had a
14 chance to review them, but I did provide them.

15 THE COURT: I can indicate that having been in court
16 earlier this morning, Ms. Osborne has been in court
17 continuously, and so I suspect she's not had time.

18 Ms. Osborne, again, I do want to make sure, if we were
19 to set this at 2:30 this afternoon, will that work for the
20 United States' purposes?

21 MS. OSBORNE: It will, Your Honor.

22 THE COURT: All right. So why don't we go ahead.

23 What -- Mr. Day, you will be remanded to the marshals,
24 but we'll have you back here in court at 2:30 this afternoon
25 for the detention hearing in this case.

1 THE DEFENDANT: Thank you, ma'am.

2 (Recess taken, 10:33 a.m. to 2:34 p.m.)

3 THE COURT: Good afternoon. Please be seated.

4 THE COURTROOM CLERK: This is Case No. -- we are back
5 on the record with United States of America versus Donald Day
6 Jr.

7 Defendant is present. All parties are present. This
8 is the detention hearing.

9 THE COURT: All right. Good afternoon. We are back
10 on the record for the detention hearing.

11 Ms. Osborne, I will check with you. Obviously we set
12 this a little later in the day to allow you sufficient time to
13 be prepared. Do you -- have you been able to take care of the
14 preparation that you were requesting?

15 MS. OSBORNE: Yes, Your Honor. Thank you.

16 THE COURT: All right. Very good.

17 And Mr. Mulligan, are there any last-minute issues
18 before we begin?

19 MR. MULLIGAN: Your Honor, I have two character
20 letters I'd like to submit to the Court. I have provided a
21 copy to Ms. Osborne. I don't know if she objects or not.

22 THE COURT: All right. Please go ahead and provide
23 those.

24 THE COURTROOM CLERK: Thank you.

25 THE COURT: All right. So basically when we broke, I

1 had explained how the statute works, how the issue of
2 detention, and basically that there are factors that I look at
3 work.

4 So I will turn first, because they have the burden, to
5 the United States for their argument and proffer of facts.
6 Ms. Osborne?

7 MS. OSBORNE: Thank you, Your Honor.

8 Your Honor, here the defendant has been charged by
9 indictment. The grand jury has found probable cause regarding
10 two counts of interstate threats, one to law enforcement
11 generally, as well one relating to the director general of the
12 World Health Organization.

13 And as to Count 1, on December 12th, 2022, the threats
14 toward law enforcement surround an incident that occurred in
15 Queensland, Australia. On that date, December 12th, 2022, four
16 Queensland police officers went to the residence of a home that
17 was owned by Gareth and Stacey Train. They are referenced in
18 the indictment as Individual 1 and 2.

19 Also at that residence was Nathaniel Train, or
20 Nathaniel Train was the brother of Gareth Train and associated
21 with the residence in any instance. But the Queensland police
22 officers went to the residence looking for Nathaniel Train.
23 They had received a report from Nathaniel Train's wife several
24 months previous that he had been missing, and so they were
25 trying to connect with the residence to investigate that

1 allegation.

2 When the Queensland police officers walked toward the
3 Trains' residence, the Trains opened fire, killing two police
4 officers, wounding a third. There was a police officer that --
5 the police officer that was wounded, not killed, was able to
6 make escape to a vehicle.

7 There was a fourth police officer that was wounded and
8 made escape to an area near the residence that is referred to
9 as "the bush." And the Trains at that point in time, realizing
10 there had been a law enforcement officer that escaped,
11 unleashed their dogs to find that individual but also set the
12 bush afire hoping to flush that individual out.

13 That individual ultimately survived, was rescued
14 because law enforcement was notified of the incident. A
15 neighbor heard shots fired, came over to investigate, and the
16 neighbor too was killed by the Trains.

17 On December 12th, after the officers were shot, the
18 Trains filmed themselves on YouTube. And they posted a video
19 entitled "Don't Be Afraid" on their YouTube channel. The video
20 lasted 41 seconds, and in that the Trains filmed themselves in
21 a dark setting and stated essentially: They came to kill us,
22 and we killed them. If you don't defend yourself against these
23 devils and demons, you're a coward.

24 They go on to say: We'll see you when we get home.
25 We'll see you at home, Don. Love you.

1 And the "Don" that the Trains were referring to was
2 the defendant, Donald Day Jr.

3 Evidence -- a significant amount of evidence in this
4 case includes evidence from social media and Gmail accounts, so
5 search warrants were executed on the Gmail account, as well
6 YouTube account of the Trains and the defendant, Donald Day.

7 And many comments and conversations were uncovered in
8 the execution of those search warrants. But it was apparent
9 that Donald Day Jr. had been communicating with the Trains and
10 posting comments about the Trains and what they were engaged
11 in.

12 Mr. Day, the defendant here, posted a comment to this
13 video that was uploaded by the Trains and stated: Truly, from
14 my core, I so wish that I could be with you to do what I do
15 best. I tell you, family, that those bastards will regret that
16 they ever fucked with us.

17 Although I cannot be there under my own power and
18 will, the comfort and assurance that I can offer is that our
19 enemies will become afraid of us. We are with you. We too
20 will never, ever bow to the scum which plagues us.

21 Please do what you must do with determination in your
22 hand and fury in your bellies. Tell me how I can help.
23 Anything that is within my range to do for you, I will not
24 hesitate.

25 We love you and we care for you. Don and Annie.

1 The reference to Don and Annie is the defendant
2 signing off his own name, but also, the reference to Annie is
3 his wife, who's also known as Sabrina Spires. So the defendant
4 clearly was supporting what the Trains had done.

5 On December 16th, about four days after the Queensland
6 police officers were killed, Mr. Day posted a video titled
7 "Daniel and Jane" to his YouTube channel using the name
8 Geronimo Bones.

9 There was a post-arrest, post-Miranda statement,
10 several statements by the defendant, Mr. Day. And importantly,
11 one of those statements was he indicated he was the author of
12 Geronimo Bones, the YouTube social platform. As well, he
13 indicated he was the identity and author of another social
14 platform called BitChute. That's a social platform in
15 Australia. His handle or go-by in that instance was "We're All
16 Dead As Fuck" was the title. He indicated that he was the
17 author identified with that social media account.

18 In any instance, this posting four days after the
19 killing of the Queensland police officers said: It breaks my
20 fucking heart that there's nothing I can do to help them.

21 It said: My brave brother and sister, a son and
22 daughter of the Most High, have done exactly what they were
23 supposed to do, and that is to kill these fucking devils.

24 And in a number of the defendant's postings, he refers
25 to law enforcement or police officers as devils and demons.

1 He stated: Well, like my brother Daniel, like my
2 sister Jane -- and those are references -- those are the middle
3 names of Gareth and Stacey Train. So references to Daniel and
4 Jane are Gareth and Stacey Train, the Trains.

5 He says: Well, like my brother Daniel, like my sister
6 Jane, it's no different for us. The devils come for us, they
7 fucking die. It's just that simple. We're free people. We're
8 owned by no one.

9 Day ended the video saying: Daniel, Jane, if there's
10 any way possible that you're receiving this communication, I'm
11 sorry that I'm not there to fight with you. There's no way for
12 me to be there. If you're already home, our heavenly home,
13 hold a place for us because we'll be joining you soon enough --
14 making reference to if the Trains were killed, he would soon
15 join them, in apparent anticipation of being engaged in a
16 similar fight that the Trains were engaged in and possibly
17 being killed himself.

18 As also indicated on December 16th, the defendant
19 uploaded another video titled "Brother Sister Martyr" to his
20 YouTube channel, again, coined Geronimo's Bones. And in that
21 communication, the defendant stated: The Trains did what they
22 had to do because they would not submit to a monster, to an
23 unlawful entity, to a demonic entity. Daniel and Jane did
24 exactly what their Heavenly Father would have done in the same
25 situation.

1 This is me speaking into the ether to bear witness
2 before my Heavenly Father, with the witness of my wife that I
3 am speaking the truth to this thing. And just so you know,
4 that's the only language that evil ever respects, responds to,
5 or understands, and that's the language of virtual violence.

6 The defendant obviously -- well, perhaps not quite so
7 obviously by the communications yet, but the Court can tell
8 thus far there's an element of sovereignty in those statements
9 that the defendant makes. And I want to read some additional
10 statements that demonstrate that a bit more.

11 But this Court, I'm imagining, has encountered
12 sovereign citizens before. In the most general of terms,
13 they're a group of individuals who don't believe that the
14 federal government or many aspects of government have any
15 authority over them whatsoever, and this is Mr. Day's belief as
16 well.

17 The defendant has some criminal history, and that's
18 evinced in the pretrial services report. I mentioned to the
19 Court yesterday, the defendant had a 1987 conviction for
20 larceny. It was a felony. He went to prison for that for two
21 to three years, and that conviction made him a prohibited
22 possessor. It is anticipated a superseding indictment will be
23 coming and charging the defendant with prohibited use of or
24 possession of a firearm.

25 In the defendant's post-Miranda statements, one of the

1 things that he indicated was that he had been housed in prison
2 for a number of years as a result of killing his stepfather.
3 He stated that he walked in on his stepfather raping his sister
4 and killed him.

5 I didn't see that in the context of the pretrial
6 services report criminal history. However, the defendant did
7 say that happened when he was a juvenile. It's possible that
8 that is in records that haven't been accessed or perhaps are
9 not accessible.

10 I don't know if that's true or not, but it does
11 possibly shed light on some of the comments the defendant
12 makes. The defendant has problems with authority in general,
13 also feels that government is corrupt and involved and
14 complicit in child sex trafficking rings.

15 And so I wanted to mention the defendant's statement
16 with respect to that previous experience he says he had and
17 that apparent prison sentence if that's correct.

18 There are a number of statements the defendant made
19 online that evinced his possession of -- his long-standing
20 possession of firearms. And some of those are as follows:

21 On July 16, 2022 -- this evinces not only information
22 regarding firearms but the defendant's ideology in general
23 regarding his sovereignty.

24 July 16, 2022, Mr. Day made a comment to a YouTube
25 video posted by the channel Kansas Prepper. And it states, in

1 quote: In one of my last videos, I put forth the call for all
2 whom were willing to fight and kill the bad guys to join me at
3 Wounded Knee as our initial rallying point, armed to the teeth,
4 yet not a single one of you patriots answered. In fact, many
5 of my videos were premised upon a call to action, and not once
6 were they favorably responded to.

7 So I am not one of the pussified patriots who refuse
8 to rally, fight, and die, if necessary. My wife has a lunch
9 packed for me, my gear is within arm's reach of me, and my
10 rifle is oiled. I'm ready to head out the door in less than
11 five minutes 24/7, 365, so what's it gonna be?

12 On another date, Day made the following comment to a
13 YouTube video posted by the channel The Common Sense Show. He
14 states: If you and yours would just demand that Americans
15 worth their salt to rally, armed to the teeth, eager and
16 willing to begin killing the monsters that are killing us all,
17 we might get the traction we need to defeat our wicked enemies.

18 The defendant states: Far too much time wasted
19 fussing over unlawful actions of oath breakers, order
20 followers, and "yes" men. When the law fails, it's up to you
21 to become the law, for you then become a living writ of habeas
22 corpus armed with applicable points, authorities, and a rifle
23 when necessary.

24 On February 28th, the defendant commented to a YouTube
25 video titled "Number 303 J'Acuse, J'Acuse, J'Acuse Complicit

1 Public Servants," and he stated: Those who exist outside the
2 uniform drones of commerce have never participated in any fight
3 for freedom or justice. I have an indomitable will, a noose
4 formed from barbed wire, and a shotgun, but I have not a single
5 American man to help me pull weeds. We are on our own.

6 On May 5th, the defendant made the following comment
7 to a YouTube video titled "God is the Rainmaker." He states:
8 Establishing the home you live in and the dirt it resides upon
9 as a holy ground takes effort borne of faith, diligence, and
10 intrepid disposition 24/7.

11 I know this to be true because I assert that authority
12 which our Father provides. It's not easy, yet it's never
13 without its reward and the satisfaction that comes with it.
14 When I pray for endurance and victory over evil, I do so with a
15 shotgun cradled in my arms.

16 On July 25th, the defendant posted another comment to
17 YouTube in response to a video titled "The Topic at Hand," and
18 he states: The patriot way is to arm up, mount up as a body of
19 "That's enough of your shit," and provoke the tyrants to come
20 to you. Then it's killing time. You die, they die. Burn them
21 out, they burn you out. A thousand different approaches,
22 strategies, and moves can be made, yet a real patriot is either
23 dead, in prison, or so disgusted with the two-dimensional
24 patriot types that they just say, "Fuck 'em. They're on their
25 own."

1 So I say let those bean-stacking, cartridge
2 box-buying, tampon-inserting, lukewarm, virtue-signaling,
3 closet patriots fill the female camps, eat shit and die. These
4 days I just watch the stupid through the keyhole till it's time
5 to center my rifle barrel through it. Good luck to you anyhow.

6 Day made the following comment on a video taken down
7 by YouTube, which states: Aaron, in order to maintain my ammo
8 cache, I work outside of the system. I don't have a bank
9 account, credit card, birth certificate, Social Security card,
10 driver's license, or any of the unlawful and unconstitutional
11 trappings of the current American slave class.

12 I don't work for the system, I don't support the
13 system, and I most certainly don't back down from the system.
14 I find the way -- a way through the system or around it. The
15 system and those who enforce the system are all criminals.

16 Finally, the defendant makes a number of comments,
17 Your Honor, inciting others toward violence, also comments
18 demonstrating his ideology of sovereignty. And some of those
19 are as follows:

20 During a -- let me back up.

21 He expresses in these comments a lot of frustration
22 about failed attempts to incite people to violence, and
23 particularly, incite violence against law enforcement officers.

24 On June 5th, the defendant commented on a video
25 uploaded through the YouTube channel Empire Files, stating: I

1 have diligently attempted to rally whomever I could from all
2 walks of life to make war with the demons that wear the flesh
3 of men. Yet I've had absolutely no success. It appears that
4 apart from a very few courageous souls, the spirits of the
5 oppressed are little more than sputtering candles wavering in
6 the winds of doubt, fear, and despair ever among our own kind,
7 I'm sad to report.

8 On July 10th, the defendant commented on a YouTube
9 channel, RPM Tre Vietnam, stating as follows: What you've just
10 broken down to me is precisely the message I've been delivering
11 for eight years. I've failed to rouse a single wannabe patriot
12 to get with the proper offensive, which fucked my mind up.
13 Considering the vast scope of open-ended criminal adventures
14 going down by the scum in DC to the killer cops running amok on
15 the street.

16 I mean, nothing moves the sorry motherfuckers we have
17 both attempted to call out, yet no matter how many folks are
18 unjustly and brutally subjugated to cruel and unusual
19 treatment, the lanes we try to encourage and motivate simply
20 have no heart, no balls, no purpose. They're useless pieces of
21 shit.

22 On July 16th, the defendant made the following comment
23 to a YouTube video posted by the channel Kansas Prepper: I put
24 forth the call for all who are willing to fight and kill the
25 bad guys to join me, armed to the teeth.

1 Finally, Mr. Day made the following comment to a
2 YouTube video posted by the channel The Common Sense Show, and
3 he stated: If you and yours would just demand that Americans
4 worth their salt to rally, armed to the teeth, eager and
5 willing to begin killing the monsters that are killing us all,
6 we might get the traction we need to defeat our wicked enemies.

7 Mr. Day was arrested on December 1st. A search
8 warrant was executed on his property. He was also interviewed,
9 Mirandized, and waived Miranda and made statements. And some
10 of his statements on December 1st to law enforcement were as
11 follows.

12 When discussing whether Mr. Day would record a video
13 urging his wife to come out peacefully -- Mr. Day was arrested
14 off of his property for safety purposes, and law enforcement
15 spoke with him, urging him to record a video to have Sabrina
16 Spires come out peacefully.

17 And during the conversation with law enforcement
18 regarding that, the defendant stated to agents: If anything
19 happens to my wife, and if I ever get out of these cuffs, I'll
20 come for every fucking one of you.

21 Agents also discussed with the defendant the Trains'
22 death in Australia, and the defendant told law enforcement, I
23 wish I had been there to kill those fuckers with them so that
24 they weren't alone.

25 Law enforcement discussed with Mr. Day what would have

1 happened had they come to his property with a SWAT team rather
2 than arresting him off of his property.

3 And he essentially stated that they would have been
4 mopping him up, referring to a shoot-out that would have
5 occurred. He would have attempted to kill them. They would
6 have ultimately killed him, and they would have been mopping
7 him up.

8 Day discussed with law enforcement other governmental
9 entities. He seemed to be fixated on certain governmental
10 entities involved in child trafficking rings. He referred to
11 Bill Gates and Hillary Clinton as scumbags and people that
12 would not walk out of the room alive if he were in it.

13 When officers executed the search warrant at Mr. Day's
14 property -- he and his wife own 90 acres, three separate
15 parcels. It's a remote property a little ways out of Heber
16 City -- they found a number of things.

17 The property itself was set up -- and by the way,
18 Mr. Day made reference to this property being planned
19 essentially for his last stand, and essentially any law
20 enforcement that would come, there would be a stand.

21 And the property was situated for that stand. He had
22 a Conex box, which is a shipping container, situated on the
23 property. On top of the Conex box there were sandbags stacked
24 around the perimeter and top of the box, which essentially
25 provided as a shooting perch, provided as a means of resting

1 one's weapon to shoot and also a means of protecting those that
2 would shoot back at him.

3 There were several dugouts on the property, and by
4 "dugouts," I mean indentations in the ground that had -- where
5 the dirt had been dug out. And in two of those instances,
6 there were camper shells from the back of trucks that were
7 placed over the dugouts. Those appeared to have also been
8 ready as serving as essentially a shooting post, a protected
9 area where he could shoot out from the area.

10 Additional items found on the property included nine
11 firearms, one of the firearms was a sawed-off shotgun, and
12 several thousands of rounds of ammunition. The defendant had
13 body armor and gas masks in his possession on the property as
14 well.

15 The investigation reveals that the defendant has
16 essentially, in his mind, created a world where there's evil
17 all around and he is the savior against that evil. Many of the
18 evil entities in his mind are governmental authority and
19 particularly police officers.

20 When Sabrina Spires was interviewed, they -- law
21 enforcement asked her as well, what do you think would have
22 happened if the SWAT team had responded to arrest Mr. Day at
23 the property?

24 And she said, if that -- if the SWAT team had
25 responded, I would essentially be in heaven now with Mr. Day,

1 as well the Trains, essentially referencing that she would have
2 been involved in that fight, Mr. Day would have been involved
3 in a fight against law enforcement should they come to his
4 property.

5 Your Honor, our position is that the defendant is an
6 extreme danger to the community, and that's not just evinced by
7 the offenses the defendant is charged with. I spent some time
8 going over the comments that he's made over time to demonstrate
9 that outside the offenses, he has a mindset which is extremely
10 dangerous. He is geared toward eliminating the evil that he
11 sees to be as law enforcement and other governmental entities,
12 such as the person in Count 2, which is the director of the
13 World Health Organization.

14 The defendant has a belief that the government was
15 complicit in unleashing viruses and vaccinations which were
16 designed to harm the populace. So in light of the defendant's
17 mindset, in light of the nature of the offenses, we believe
18 he's an extreme danger.

19 He's also a flight risk. He does not recognize this
20 Court as having authority over him. He will not submit to this
21 Court's orders, from the government's perspective. And
22 certainly, if the defendant is permitted to be released and
23 does not submit to court orders to show up or otherwise and a
24 warrant is issued, there is no doubt that law enforcement would
25 be in extreme danger if they had to try to arrest the

1 defendant.

2 So our request is that the defendant be detained as a
3 danger as well as a risk of flight and that -- Your Honor, I
4 note that pretrial services indicates that Sabrina Spires is a
5 suitable third party. I think the Court can tell from some of
6 the proffer, she is essentially complicit in this ideology so
7 she would not be a suitable third-party custodian.

8 Thank you.

9 THE COURT: Thank you, Ms. Osborne.

10 Mr. Mulligan?

11 MR. MULLIGAN: Thank you, Your Honor.

12 Your Honor, first, I will state the obvious. My
13 client takes issue with many of the allegations made by the
14 government. I can't cross-examine a proffer.

15 The indictment notwithstanding, obviously a grand jury
16 was presented information that caused them to find probable
17 cause, but from what Ms. Osborne just said, none of those
18 things she said constitutes a threat, Your Honor.

19 We have the right to free speech in this country. And
20 for something to rise to being criminalized speech, it has to
21 be a true threat. It can't be conditional. There must be an
22 identified target. Internet hyperbole, internet venting, does
23 not qualify as that, Your Honor.

24 The government's case is exceedingly weak. The
25 government just had 20 minutes talking about all this -- these

1 terrible things he's done. Not one of those things is illegal,
2 Your Honor.

3 Their conjecture that he's a -- has been -- is a
4 prohibited possessor, was in possession of weapons illegally,
5 is nothing but that. They don't have probable cause for that.

6 My client's wife is not a prohibited possessor. She
7 is not prohibited from owning weapons. She lives with him.
8 Weapons that are owned by her are not his. If the government
9 had proof of that, I assume they would have brought those
10 charges.

11 The government's case is exceedingly weak, Your Honor.
12 Let's look at the facts as they are presented in the pretrial
13 services report.

14 Your Honor, my client is 58 years old. He has had no
15 law enforcement contact in over 20 years, Your Honor. These
16 allegations are from -- the most recent is 10 months old. Your
17 Honor, he's some kind of massive threat that the government has
18 allowed to just remain free despite these statements that he
19 made on the internet 10 months ago, a year ago.

20 Your Honor, their own argument is undercut by their
21 lack of action. He's not a threat to anybody. He lives alone
22 with his wife, Your Honor. He's had no law enforcement
23 contact. He's had no negative -- he hasn't threatened anybody.
24 He hasn't had any negative law enforcement contact in 20 years.
25 Actually, more. 22 years, Your Honor.

1 There are no warrants, Your Honor. In his prior
2 criminal record, there are no failures to appear. He showed up
3 for court.

4 Your Honor, he's lived in the same house for 13 years.
5 Hasn't moved. He hasn't fled. He hasn't gone anywhere. He
6 has no substantial resources, Your Honor. He has no ability to
7 flee. He runs a ranch that requires constant attention.

8 As the letter I submitted to the Court shows, his wife
9 wanted to be here but she couldn't be here because she has to
10 tend to their animals. They have chickens. They have other
11 things. It's remote. There are coyotes and hawks and things
12 that they need to protect -- threats to their livestock, Your
13 Honor.

14 I think the letters also reflect that he has excellent
15 support from his wife. He also has community support from a
16 neighbor. His wife indicated to me that other people in the
17 community also indicated their support for him. They know him
18 as a person who keeps to himself and is otherwise a polite and
19 helpful person in the community.

20 Your Honor, finally, he has Stage 4 colon cancer, Your
21 Honor. He can't flee. He has nowhere to go. He has no
22 ability to flee, and his physical condition prevents him from
23 fleeing.

24 Your Honor, over the weekend -- he can't really eat
25 the food at the jail, so he's been essentially without food for

1 five days. He was found unconscious in the jail in a pool of
2 blood. They took him to the hospital. They gave him
3 intravenous hydration and I suspect some nutrition.

4 He simply -- he's not a threat to anybody. He was --
5 before his cancer, he was 190 pounds. He's now about 140
6 pounds, Your Honor. He needs care. He has not been in -- he's
7 entitled to get the kind of care that he desires, Your Honor.
8 His understanding is he had brain cancer. Through treatment
9 from his wife and a medicine woman, that has gone into
10 remission, but it metastasized to his colon.

11 He has had no law enforcement contact in 20 years,
12 Your Honor. The government thinks he's a big threat. They
13 failed to articulate a single threat, frankly, in their
14 statement. Obviously an indictment has been issued, but that's
15 an un- -- the evidence is untested. The government can
16 essentially present a very one-sided picture to a grand jury.

17 We would ask the Court to find that the government's
18 case is not strong, that he has no prior criminal record in the
19 past 20 years, and has been in the same residence for 13 years,
20 he's married long-term, he has good family and community
21 support, and release him on pretrial services' supervision.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Mulligan.

24 Ms. Osborne.

25 MS. OSBORNE: Your Honor, with respect to the criminal

1 history, yes, it is dated. But what is concerning are the
2 entries which do evince the defendant's propensity of violence
3 toward police officers. There is a -- and other violence.

4 There's a robbery from '86, no disposition; battery
5 from '86, no disposition; battery on a peace officer from '89,
6 or emergency personnel, from '89, no disposition; battery on a
7 peace officer, for which the defendant was apparently confined
8 for two years in 1989; also assault by a prisoner in 1990, for
9 which the defendant was apparently sentenced to four years and
10 eight months.

11 So there is definitely a demonstration of a
12 willingness to engage in violence, however long ago it was.

13 What I would say about the defendant's comments with
14 respect to -- or counsel's comments with respect to the
15 defendant being no threat, one threat that I did forget to
16 mention to the Court is when law enforcement was interviewing
17 the defendant on December 1st, he did state: If you hurt my
18 wife, I'll come after every last one of you. And essentially
19 threatened to kill law enforcement and stated: That is no idle
20 threat, and emphasized this was no idle threat.

21 The other thing I would point out, and perhaps it's
22 obvious, is that whether the defendant himself is too ill to
23 get up and out of his house to harm law enforcement, he
24 certainly set up the stage to harm law enforcement, as
25 evidenced by the condition of his residence.

1 And perhaps one of the equally dangerous things the
2 defendant has done is sent the postings and communications out
3 to the vast public, inciting violence against law enforcement.
4 And that is extremely dangerous, and that is shown by the
5 defendant's association with the Trains and two Queensland
6 police officers who died, as well as a civilian neighbor who
7 came to see what was happening. That person died as well.

8 The defense says the defendant is too ill, perhaps, to
9 present a danger. I see that there is no formal diagnosis. It
10 appears that the defendant has refused to see a doctor, and so
11 to the extent the Court considers his illness, I would submit
12 that for the defendant's own personal health, he's better off
13 in custody where he can get care and treatment than out of
14 custody, but more concerning is the threat that he clearly
15 poses.

16 THE COURT: Thank you, Ms. Osborne.

17 In making my decision, I am guided to make this
18 decision based on the assessment of several factors. They
19 start off with the nature and circumstances of the offenses
20 that are charged.

21 In this case, the defendant has been indicted, and
22 it's really a speaking indictment that sets out in great detail
23 the events in Australia leading to the death of three
24 individuals. And -- well, ultimately, the very, very
25 devastating series of events that occurred in Australia and

1 what the defendant's role or role with those -- with the two
2 individuals who started that was.

3 However, the specific -- I want to be very clear.
4 There is a constitutional right to express ideology and
5 beliefs. The issue comes when there is action and specific
6 threats or there are threats, and that is really the line that
7 the particular -- the current indictment sets out here has to
8 do with actions specific -- well, and specific threats as
9 described in the indictment.

10 But I do want to be very clear. This is -- there is
11 no prosecution for ideology or beliefs, and I recognize that
12 the United States has set out a lot of ideology, and if I'm
13 interpreting that correctly, it's related to try to explain
14 what the mental intent behind the threats have been and behind
15 the danger posed by the firearms in the situation there on the
16 property.

17 So I want to be very clear that I'm not considering
18 this in terms of ideology or beliefs, which are protected.
19 There is a difference, and that is something that we do in the
20 court, is to separate those issues out.

21 In any event, the underlying cases concerning the
22 United States's proffer that based on the search warrants
23 conducted last Friday that there are likely to be additional
24 charges coming, Mr. Mulligan's quite right. He can't
25 cross-examine a proffer, and certainly the current charges

1 relate to the threats that are described in the indictment.

2 But I believe the United States has set out that given
3 the evidence that has been described from last Friday, and
4 based on the situation that Mr. Day finds himself in with a --
5 with felony convictions, that there may well be subsequent
6 events -- or offenses coming.

7 I take that in the light in which it was offered.
8 That is not what I'm examining now, but I certainly understand
9 that distinction.

10 The next factor that I'm guided to look at is one that
11 the Ninth Circuit has directed us to give the least
12 consideration, and that would be the weight of the evidence.

13 It does appear based on the nature of the speaking
14 indictment, based on the evidence that has been proffered, that
15 the weight of the evidence appears to be strong, but given the
16 Ninth Circuit direction, I'm not going to give that a lot of
17 consideration, which is the appropriate level.

18 The next part that I look at or that I'm guided to
19 look at, I really put together related category of history and
20 characteristics of the defendant, and that includes character,
21 physical and mental condition, family ties, employment, length
22 of residence in the community, community ties, past conduct,
23 any history of drug or alcohol abuse, and record of
24 appearances -- appearance in past court hearings.

25 It does appear the defendant's -- I'll sort of go from

1 the bottom up. When considering that, it does appear the
2 defendant's criminal history is quite old. It is concerning in
3 that the defendant does have felony convictions, but it does
4 appear that these are quite old.

5 I do see a pattern that is concerning based on the
6 criminal convictions involving law enforcement officers, given
7 the current charges, but I understand the time period that's
8 been involved between those things. But I do note that that
9 factor is there, and it is something that I would give some
10 consideration to.

11 It does appear that the defendant has strong ties.
12 I've reviewed the character letters from his wife and from a
13 neighbor who obviously has had a positive experience and does
14 reflect well on the defendant's character.

15 Conversely, though, I am allowed to consider what the
16 United States has proffered in that regard, and it is
17 concerning in terms of character and the way that really the
18 structure of law enforcement has been characterized by the
19 defendant. It is of concern to the Court.

20 And I -- again, I recognize there is a constitutional
21 right to ideology and beliefs. But it is concerning when that
22 ideology involves really a violent ideology relating to the
23 structures that keep this society functioning. So it is of
24 concern.

25 It's difficult to assess what to make of the physical

1 condition. The defendant proffers that he is in poor health.
2 That appears to be -- well, and he's certainly reflecting that
3 in the courtroom, both this morning and this afternoon. It's
4 unclear when a diagnosis was reached. It is concerning to the
5 Court that he's not sought medical treatment. And again, he's
6 entitled to seek the medical care of his choice, and he's done
7 that, and he believes that that's been helpful to him. But it
8 is very difficult given the lack of other information about
9 that to assess that certainty.

10 And I will say as well that there is -- even if the
11 defendant is in poor physical condition, weapons are certainly
12 quite the equalizer when it comes to individuals who are in
13 weaker physical condition. And it is concerning to hear about
14 the circumstances at the defendant's property, which do seem to
15 be consistent with the threats that he's made.

16 I am concerned by what appears to be really a sniper's
17 nest on the top of a Conex box on this property, which is in a
18 remote location, and by the presence of dugouts. There may be
19 another explanation, but I do reflect on the pretrial services
20 report that reflects as well a shooting range on the property,
21 which given the defendant's status as a felon and his
22 statements about being a felon who's armed, it is of concern to
23 the Court really how that all plays out.

24 The last factor that I look to is the nature and the
25 seriousness of the danger posed to any person or to the

1 community. And I do have real concerns based on what's been
2 proffered.

3 I have specific concerns about statements that are
4 attributed to the defendant as recently as last Friday, that if
5 he gets out of the cuffs, that he will come after the officers
6 who were involved, and that is of concern. That is a pretty
7 specific threat to kill very specific individuals.

8 And it does appear that the defendant has prepared for
9 that eventuality. I am concerned by the presence of body armor
10 and gas masks, which would seem to be anticipating action on
11 his property as well.

12 And his statements, although they were hypothetical
13 about what would have happened had law enforcement gone on to
14 his property, is of concern, and it's not this Court's intent
15 to ever set out a situation where that situation would come to
16 fruition, frankly.

17 I do also find that the nature of the indictment and
18 what has been described do cause this Court concern about
19 whether the defendant would follow the Court's orders. I will
20 note the defendant has been entirely respectful and appropriate
21 in the courtroom, and I -- he has not given any cause in the
22 courtroom for any concerns about how seriously he takes the
23 Court's actions.

24 But I have -- I am -- I do have some concerns about
25 how I would be able to structure anything that would address

1 the concerns that have been raised or the facts that have been
2 raised.

3 The long story short is I do find -- and I need to
4 spell out what the legal burdens are.

5 The United States has established, I think, by a
6 preponderance of the evidence that the defendant poses a risk
7 of nonappearance at future proceedings. There may be
8 conditions that perhaps could be attached that would reduce
9 that risk. I'm struggling to think about what those could be.

10 But the Court's more considerable concern has to do
11 with the dangerousness. Now, because of the nature of this
12 concern, the United States' burden is to establish by clear and
13 convincing evidence that the defendant poses a danger.

14 And I do find the United States has established beyond
15 clear and convincing evidence that the defendant poses a danger
16 as described by the statute. And I have real concerns as well
17 about what has been described in terms of obstructing potential
18 testimony or witnesses; i.e., the law enforcement officers as
19 well.

20 So I do find specifically that there aren't any
21 conditions that I could attach to reduce those risks or to
22 mitigate those risks to a degree that the Court would be able
23 to release the defendant and basically remove that
24 dangerousness assessment.

25 So, sir, you will be maintained in custody pending

1 further proceedings in this matter.

2 Now, you heard me announce the trial date in this case
3 and that its location is in the Phoenix courthouse. What that
4 means is that at some point in the fairly near future, you'll
5 be transported to a facility that's closer to Phoenix. And I
6 will say it is a facility that has better medical care than the
7 facility you're in currently, so to the extent that that may or
8 may not be helpful.

9 But that transport will take place at some point in
10 the future. In any event, you will likely receive a new
11 attorney with the Federal Public Defender's Office, the idea
12 being it will be an attorney in that office who works every day
13 out of the Phoenix courthouse and will be able to represent you
14 for hearings in that courthouse and may have an easier time
15 being able to consult with you in that next facility that
16 you'll be in.

17 So I believe that we've handled everything that we can
18 take care of here today. I do want to check with the attorneys
19 before we adjourn just to make sure.

20 Ms. Osborne, is there anything further on behalf of
21 the United States?

22 MS. OSBORNE: No, Your Honor. Thank you.

23 THE COURT: Mr. Mulligan, is there anything further on
24 behalf of your client?

25 MR. MULLIGAN: No, Your Honor. Thank you.

1 THE COURT: Good luck to you, sir.

2 (Proceedings concluded at 3:24 p.m.)

C E R T I F I C A T E

I, JENNIFER A. PANCRAZ, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DATED at Phoenix, Arizona, this 22nd day of December, 2023.

s/Jennifer A. Pancratz
Jennifer A. Pancratz